

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-00792-RDM**

PROTECT DEMOCRACY PROJECT, INC. v. U.S.
DEPARTMENT OF HEALTH & HUMAN SERVICES
Assigned to: Judge Randolph D. Moss
Demand: \$0
Cause: 05:552 Freedom of Information Act

Date Filed: 04/28/2017
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**PROTECT DEMOCRACY
PROJECT, INC.**

represented by **Benjamin Leon Berwick**
THE PROJECT DEMOCRACY
PROJECT, INC
15 Main Street
Suite 312
Watertown, MA 02472
(202) 579-4582
Fax: (929) 777-8428
Email: ben.berwick@protectdemocracy.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David J. Sandler
POLICYGENIUS
50 W 23rd St
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TERMINATED: 06/17/2019

Matthew D. Forbes
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

**U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES**

represented by **Daniel J. Halainen**
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
Room 12304
Washington, DC 20005
(202) 616-8101
Fax: (202) 616-8470
Email: daniel.j.halainen@usdoj.gov
TERMINATED: 10/02/2019
LEAD ATTORNEY

James O. Bickford
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|-----------|---|
| 04/28/2017 | <u>1</u> | COMPLAINT against U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Filing fee \$ 400 receipt number 0090-4932032) filed by THE PROTECT DEMOCRACY PROJECT, INC.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Summons, # <u>4</u> Civil Cover Sheet)(Sandler, David) (Entered: 04/28/2017) |
| 04/28/2017 | <u>2</u> | LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests (<i>none</i>) by THE PROTECT DEMOCRACY PROJECT, INC. (Sandler, David) (Entered: 04/28/2017) |
| 04/28/2017 | | Case Assigned to Judge Randolph D. Moss. (sth) (Entered: 04/28/2017) |
| 04/28/2017 | <u>3</u> | SUMMONS (1) Issued Electronically as to U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Attachments: # <u>1</u> Summons)(sth) (Entered: 04/28/2017) |
| 04/28/2017 | | SUMMONS Not Issued as to U.S. Attorney and the U.S. Attorney General (sth) (Entered: 04/28/2017) |
| 05/01/2017 | <u>4</u> | STANDING ORDER: The parties are hereby ORDERED to comply with the directives set out in the attached Standing Order. Signed by Judge Randolph D. Moss on 5/1/2017. (lcrdm1,) (Entered: 05/01/2017) |
| 05/01/2017 | <u>5</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES served on 4/28/2017 (Sandler, David) (Entered: 05/01/2017) |
| 05/08/2017 | <u>6</u> | NOTICE of Appearance by Benjamin Leon Berwick on behalf of PROTECT DEMOCRACY PROJECT, INC. (Berwick, Benjamin) (Entered: 05/08/2017) |
| 05/09/2017 | <u>7</u> | REQUEST FOR SUMMONS TO ISSUE <i>to the United States Attorney's Office</i> re <u>1</u> Complaint, filed by PROTECT DEMOCRACY PROJECT, INC.. Related document: <u>1</u> Complaint, filed by PROTECT DEMOCRACY PROJECT, INC..(Sandler, David) (Entered: 05/09/2017) |
| 05/09/2017 | <u>8</u> | REQUEST FOR SUMMONS TO ISSUE <i>to the Attorney General of the United States</i> re <u>1</u> Complaint, filed by PROTECT DEMOCRACY PROJECT, INC.. Related document: <u>1</u> Complaint, filed by PROTECT DEMOCRACY PROJECT, INC..(Sandler, David) (Entered: 05/09/2017) |
| 05/10/2017 | <u>9</u> | SUMMONS (2) Issued Electronically as to U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Summons)(td) (Entered: 05/10/2017) |
| 05/16/2017 | <u>10</u> | ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/11/2017. Answer due for ALL FEDERAL DEFENDANTS by 6/10/2017. (Sandler, David) Modified on 5/17/2017 (jf). (Entered: 05/16/2017) |
| 05/16/2017 | <u>11</u> | ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/11/2017. Answer due for ALL FEDERAL DEFENDANTS by 6/10/2017. (Sandler, David) Modified on 5/17/2017 (jf). (Entered: 05/16/2017) |
| 05/17/2017 | | NOTICE OF CORRECTED DOCKET ENTRY: Document Nos. re <u>11</u> Summons Returned Executed in FOIA as to U.S. Attorney, <u>10</u> Summons Returned Executed in FOIA as to U.S. Attorney, was entered in error due to insufficient proof of service and will be refiled by counsel. (jf) (Entered: 05/17/2017) |
| 05/24/2017 | <u>12</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/16/2017. Answer due for ALL FEDERAL DEFENDANTS by 6/15/2017. (Sandler, David) (Entered: 05/24/2017) |

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| 05/24/2017 | <u>13</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 5/16/17 (With Proof of Delivery Attached). (Sandler, David) (Entered: 05/24/2017) |
| 06/15/2017 | <u>14</u> | ANSWER to Complaint by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES.(Halainen, Daniel) (Entered: 06/15/2017) |
| 06/16/2017 | | MINUTE ORDER: The parties are hereby ORDERED to appear for a status conference on June 26, 2017, at 10:30 a.m. in Courtroom 21. The parties are further ORDERED to meet and confer prior to the status conference to discuss scheduling for further proceedings. Signed by Judge Randolph D. Moss on 6/16/2017. (lcrdm1,) (Entered: 06/16/2017) |
| 06/16/2017 | | Set/Reset Hearings: Status Conference set for 6/26/2017, at 10:30 AM, in Courtroom 21, before Judge Randolph D. Moss. (kt) (Entered: 06/16/2017) |
| 06/26/2017 | | Minute Entry for proceedings held before Judge Randolph D. Moss: Status Conference held on 6/26/2017. Order forthcoming. (Court Reporter: Jeff Hook.) (kt) (Entered: 06/26/2017) |
| 06/26/2017 | | MINUTE ORDER: On or before July 10, 2017, the parties are hereby ORDERED to file a joint status report informing the Court as to the status of Defendant's search for records responsive to Plaintiff's FOIA request, updating the Court as to the status of Plaintiff's request for a fee waiver, and proposing a schedule for further proceedings. Signed by Judge Randolph D. Moss on 6/26/2017. (lcrdm1,) (Entered: 06/26/2017) |
| 06/27/2017 | | Set/Reset Deadlines: Joint Status Report due by 7/10/2017. (kt) (Entered: 06/27/2017) |
| 07/10/2017 | <u>15</u> | Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Halainen, Daniel) (Entered: 07/10/2017) |
| 07/11/2017 | | MINUTE ORDER: Upon consideration of the Joint Status Report <u>15</u> , the parties are hereby ORDERED to submit a further joint status report on or before September 15, 2017, informing the Court as to the status of Defendant's production of responsive records to Plaintiff, updating the Court as to the status of Plaintiff's request for a fee waiver, and, if necessary, proposing a schedule for further proceedings. Signed by Judge Randolph D. Moss on 7/11/2017. (lcrdm1,) (Entered: 07/11/2017) |
| 07/11/2017 | | Set/Reset Deadlines: Joint Status Report due by 9/15/2017. (kt) (Entered: 07/11/2017) |
| 09/15/2017 | <u>16</u> | Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Halainen, Daniel) (Entered: 09/15/2017) |
| 09/16/2017 | | MINUTE ORDER: Upon consideration of the Joint Status Report <u>16</u> , the parties are hereby ORDERED to file a further joint status report on or before October 13, 2017, updating the Court as to what, if any, additional proceedings are necessary and proposing a schedule for those proceedings. Signed by Judge Randolph D. Moss on 9/16/2017. (lcrdm1,) (Entered: 09/16/2017) |
| 09/18/2017 | | Set/Reset Deadlines: Joint Status Report due by 10/13/2017. (kt) (Entered: 09/18/2017) |
| 10/13/2017 | <u>17</u> | Joint STATUS REPORT by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Halainen, Daniel) (Entered: 10/13/2017) |
| 10/17/2017 | | MINUTE ORDER: Upon consideration of the parties' Joint Status Report <u>17</u> , it is hereby ORDERED that (1) Defendant shall file its motion for summary judgment on or before December 17, 2017; (2) Plaintiff shall file its consolidated cross-motion for summary judgment and opposition to Defendant's motion on or before January 23, 2018; (3) Defendant shall file its consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment on or before February 22, 2018; and (4) Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before March 8, 2018. Signed by Judge Randolph D. Moss on 10/17/17. (lcrdm1,) (Entered: 10/17/2017) |
| 10/18/2017 | | Set/Reset Deadlines: Defendant shall file its motion for summary judgment on or before 12/17/2017; Plaintiff shall file its consolidated cross-motion for summary judgment and opposition to Defendant's motion on or before 1/23/2018; Defendant shall file its consolidated reply in support of its motion for summary judgment and |

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| | | opposition to Plaintiff's cross-motion for summary judgment on or before 2/22/2018; Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before 3/8/2018. (kt) (Entered: 10/18/2017) |
| 12/15/2017 | <u>18</u> | MOTION for Summary Judgment by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Michael Marquis, # <u>3</u> Declaration of Hugh Gilmore, # <u>4</u> Statement of Facts, # <u>5</u> Text of Proposed Order)(Halainen, Daniel) (Entered: 12/15/2017) |
| 01/17/2018 | <u>19</u> | <p>TRANSCRIPT OF PROCEEDINGS before Judge Randolph D. Moss held on June 26, 2017; Page Numbers: 1 – 9. Date of Issuance: January 17, 2018. Court Reporter: Jeff Hook. Telephone number: 202-354-3373. Transcripts may be ordered by submitting the <u>Transcript Order Form</u></p> <p>For the first 90 days after this filing date, the transcript may be viewed at the courthouse at a public terminal or purchased from the court reporter referenced above. After 90 days, the transcript may be accessed via PACER. Other transcript formats, (multi-page, condensed, CD or ASCII) may be purchased from the court reporter.</p> <p>NOTICE RE REDACTION OF TRANSCRIPTS: The parties have twenty-one days to file with the court and the court reporter any request to redact personal identifiers from this transcript. If no such requests are filed, the transcript will be made available to the public via PACER without redaction after 90 days. The policy, which includes the five personal identifiers specifically covered, is located on our website at www.dcd.uscourts.gov.</p> <p>Redaction Request due 2/7/2018. Redacted Transcript Deadline set for 2/17/2018. Release of Transcript Restriction set for 4/17/2018.(Hook, Jeff) (Entered: 01/17/2018)</p> |
| 01/23/2018 | <u>20</u> | Cross MOTION for Summary Judgment by PROTECT DEMOCRACY PROJECT, INC. (Attachments: # <u>1</u> Declaration of David Sandler in Support of Cross Motion, # <u>2</u> Text of Proposed Order)(Sandler, David) Modified on 1/24/2018 (znmw). (Entered: 01/23/2018) |
| 01/23/2018 | <u>21</u> | Memorandum in opposition to re <u>18</u> MOTION for Summary Judgment filed by PROTECT DEMOCRACY PROJECT, INC.. (Attachments: # <u>1</u> Declaration of David Sandler in Support of Cross Motion, # <u>2</u> Text of Proposed Order)(Sandler, David) Modified on 1/24/2018 (znmw). (Entered: 01/23/2018) |
| 02/20/2018 | <u>22</u> | Unopposed MOTION for Extension of Time to File Response/Reply by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Halainen, Daniel) (Entered: 02/20/2018) |
| 02/21/2018 | | MINUTE ORDER: Upon consideration of Defendant's Motion for Extension of Time <u>22</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall file its consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment on or before March 9, 2018; and Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before March 23, 2018. Signed by Judge Randolph D. Moss on 2/21/2018. (lcrdm1,) (Entered: 02/21/2018) |
| 02/21/2018 | | Set/Reset Deadlines: Defendant shall file its consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion for summary judgment on or before 3/9/2018; Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before 3/23/2018. (kt) (Entered: 02/21/2018) |
| 03/09/2018 | <u>23</u> | Unopposed MOTION for Extension of Time to File Response/Reply as to <u>18</u> MOTION for Summary Judgment , <u>20</u> Cross MOTION for Summary Judgment / <i>The Protect Democracy Project's Cross Motion for Summary Judgment, Memorandum of Points and Authorities in Support of The Protect Democracy Project's Cross Motion for Summary Judgment and in Opposition to</i> by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Halainen, Daniel) (Entered: 03/09/2018) |
| 03/09/2018 | | MINUTE ORDER: Upon consideration of Defendant's Motion for Extension of Time <u>23</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall file its |

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| | | consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion on or before April 9, 2018. It is further ORDERED that Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before April 23, 2018. Signed by Judge Randolph D. Moss on 3/9/2018. (lcrdm1,) (Entered: 03/09/2018) |
| 03/09/2018 | | Set/Reset Deadlines: Defendant's consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion due on or before 4/9/2018; Plaintiff's reply in support of its cross-motion for summary judgment due on or before 4/23/2018. (kt) (Entered: 03/09/2018) |
| 04/04/2018 | <u>24</u> | Unopposed MOTION for Extension of Time to File Response/Reply as to <u>18</u> MOTION for Summary Judgment , <u>20</u> Cross MOTION for Summary Judgment <i>The Protect Democracy Project's Cross Motion for Summary Judgment, Memorandum of Points and Authorities in Support of The Protect Democracy Project's Cross Motion for Summary Judgment and in Opposition t</i> by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Halainen, Daniel) (Entered: 04/04/2018) |
| 04/05/2018 | | MINUTE ORDER: Upon consideration of the Motion for Extension of Time <u>24</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall file its consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion on or before April 20, 2018; and Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before May 8, 2018. Signed by Judge Randolph D. Moss on 4/5/2018. (lcrdm1,) (Entered: 04/05/2018) |
| 04/05/2018 | | Set/Reset Deadlines: Defendant shall file its consolidated reply in support of its motion for summary judgment and opposition to Plaintiff's cross-motion on or before 4/20/2018; Plaintiff shall file its reply in support of its cross-motion for summary judgment on or before 5/8/2018. (kt) (Entered: 04/05/2018) |
| 04/20/2018 | <u>25</u> | Memorandum in opposition to re <u>20</u> Cross MOTION for Summary Judgment / <i>The Protect Democracy Project's Cross Motion for Summary Judgment, Memorandum of Points and Authorities in Support of The Protect Democracy Project's Cross Motion for Summary Judgment and in Opposition t and Reply in Support of 18 Defendant's Motion for Summary Judgment</i> filed by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Attachments: # <u>1</u> Declaration of Michael Bell, # <u>2</u> Declaration of Hugh Gilmore, # <u>3</u> Statement of Facts)(Halainen, Daniel) (Entered: 04/20/2018) |
| 04/20/2018 | <u>26</u> | REPLY to opposition to motion re <u>18</u> MOTION for Summary Judgment <i>and Opposition to Plaintiff's Cross-Motion for Summary Judgment</i> filed by U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES. (Attachments: # <u>1</u> Declaration of Michael Bell, # <u>2</u> Declaration of Hugh Gilmore, # <u>3</u> Statement of Facts)(Halainen, Daniel) (Entered: 04/20/2018) |
| 05/08/2018 | <u>27</u> | REPLY to opposition to motion re <u>20</u> Cross MOTION for Summary Judgment / <i>The Protect Democracy Project's Cross Motion for Summary Judgment, Memorandum of Points and Authorities in Support of The Protect Democracy Project's Cross Motion for Summary Judgment and in Opposition t</i> filed by PROTECT DEMOCRACY PROJECT, INC.. (Sandler, David) (Entered: 05/08/2018) |
| 10/16/2018 | <u>28</u> | NOTICE of Change of Address by Daniel J. Halainen (Halainen, Daniel) (Entered: 10/16/2018) |
| 02/27/2019 | <u>29</u> | MEMORANDUM OPINION AND ORDER: It is hereby ORDERED that the Department's motion for summary judgment, Dkt. <u>18</u> , is GRANTED in part and DENIED in part. It is further ORDERED that Plaintiff's cross-motion for summary judgment, Dkt. <u>20</u> , is GRANTED in part and DENIED in part. See document for details. Signed by Judge Randolph D. Moss on 2/27/2019. (lcrdm1,) (Entered: 02/27/2019) |
| 06/12/2019 | <u>30</u> | MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Matthew D. Forbes, :Firm- Debevoise & Plimpton LLP, :Address- 919 Third Ave., New York, NY 10022. Phone No. - (212) 909-6000. Fax No. - (212) 909-6836 Filing fee \$ 100, receipt number 0090-6183299. Fee Status: Fee Paid. by PROTECT DEMOCRACY PROJECT, INC. (Sandler, David) (Entered: 06/12/2019) |

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| 06/12/2019 | | MINUTE ORDER: Matthew D. Forbes's motion for leave to appear pro hac vice, Dkt. <u>30</u> , is hereby GRANTED. Matthew D. Forbes may appear pro hac vice in this matter. Signed by Judge Randolph D. Moss on 6/12/2019. (lcrdm1,) (Entered: 06/12/2019) |
| 06/17/2019 | <u>31</u> | ENTERED IN ERROR. . . .NOTICE OF WITHDRAWAL OF APPEARANCE as to PROTECT DEMOCRACY PROJECT, INC.. Attorney David J. Sandler terminated. (Sandler, David) Modified on 6/20/2019 (ztd). (Entered: 06/17/2019) |
| 06/20/2019 | | NOTICE OF ERROR re <u>31</u> Notice of Withdrawal of Appearance; emailed to dsandler@debevoise.com, cc'd 5 associated attorneys — The PDF file you docketed contained errors: 1. Please refile document, 2. Please see LcvR 5.1(a) & 5.1(d). (ztd,) (Entered: 06/20/2019) |
| 10/02/2019 | <u>32</u> | NOTICE OF SUBSTITUTION OF COUNSEL by James O. Bickford on behalf of U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES Substituting for attorney Daniel J. Halainen (Bickford, James) (Entered: 10/02/2019) |
| 10/15/2019 | | MINUTE ORDER: In light of the Court's February 27, 2019 partial grant and partial denial of both the Department's motion for summary judgment and the Plaintiff's cross-motion for summary judgment, Dkt. <u>29</u> , and the subsequent lack of activity in this case, it is hereby ORDERED that the parties shall file a joint status report on or before October 29, 2019, informing the Court of the status of this case. Signed by Judge Randolph D. Moss on 10/15/19. (lcrdm1) (Entered: 10/15/2019) |
| 10/15/2019 | | Set/Reset Deadlines: Joint Status Report due by 10/29/2019, informing the Court of the status of this case. (dot) (Entered: 10/15/2019) |